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Creditors' Trustee*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11
: :
Doral Financial Corporation, : Case No. 15-10573 (SCC)
: :
Reorganized Debtor. :
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**DORAL FINANCIAL CREDITORS' TRUST'S
SIXTH SEMI-ANNUAL STATUS REPORT FOR THE PERIOD
FROM MAY 1, 2019 THROUGH OCTOBER 31, 2019**

DORAL FINANCIAL CREDITORS' TRUST

SIXTH SEMI-ANNUAL STATUS REPORT FOR THE PERIOD FROM MAY 1, 2019 THROUGH OCTOBER 31, 2019

Background

The Doral Financial Creditors' Trust (the "Trust") is a Delaware statutory trust that was formed for the benefit of the creditors of Doral Financial Corporation ("DFC" or the "Debtor"). On March 11, 2015, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). On August 10, 2016, the Bankruptcy Court entered an order confirming the *Amended Plan of Reorganization Proposed by Doral Financial Corporation and the Official Committee of Unsecured Creditors of Doral Financial Corporation* (the "Plan") which became effective on October 28, 2016 (the "Effective Date").

On the Effective Date, Drivetrain, LLC was appointed as the trustee (the "Trustee") of the Trust to liquidate the assets of the Trust and administer the claims filed against the Debtor. Also on the Effective Date, substantially all of the assets of the Debtor vested in the Trust pursuant to the Plan, including various causes of action (the "Causes of Action"), interest in and proceeds from a loan portfolio (the "I/O Strips"), 100% of the equity of the reorganized Doral Financial Corporation which holds certain Puerto Rican tax assets, and other miscellaneous assets (collectively, the "Trust Assets"). The Trust Assets included \$5.0 million in cash earmarked to fund the startup and operational costs of the Trust.

On the Effective Date, the Trustee allowed certain claims against the Debtor (the "Allowed Claims"), the holders of which received a distribution of cash and interests in the Trust (the "Interests"). The Trustee has reserved cash and Interests on account of the remaining claims filed against the Debtor (the "Disputed Claims").

The Trustee, for U.S. federal income tax purposes, made an election pursuant to Treasury Regulation section 1.468B-9 to treat the cash and Trust Interests reserved for Disputed Claims (the "Disputed Claims Reserves") as a disputed ownership fund (the "DOF") within the meaning of that section. As a separate taxable entity, the Trust will allocate taxable income or loss to the DOF, with respect to any given taxable year for which there are Disputed Claims Reserves. As Disputed Claims are resolved, the Trustee will distribute assets from the DOF to the Trust as, when, and to the extent, such Disputed Claims either became allowed or are otherwise resolved.

The Plan provides that, for federal income tax purposes, the Trust was deemed to be formed in two steps. The contribution by the Debtor of the Trust Assets was treated first as a deemed transfer of the Trust Assets to the holders of Allowed Claims, and to the DOF who is the beneficial holder of the Disputed Claims Reserves (collectively, the "Beneficiaries"). This was followed by a deemed transfer by each Beneficiary of its interest in the Trust Assets to the Trust, in exchange for Interests. The Beneficiaries are treated as the grantors of the Trust and the Trustee will file tax returns for the Trust as a "grantor trust" pursuant to Section 1.671-4(a)

of the U.S. Treasury Regulations. The Trustee will also file tax returns for the DOF. For the year-ended December 31, 2018, the DOF had a tax liability of \$524,088. The Trust had paid estimated taxes for 2018 of \$620,000, and the \$95,912 overpayment has been applied to the 2019 tax year. The Trust has not paid any estimated taxes for 2019.

The Trust is organized and established as a trust, among other things, to (i) administer the Trust Assets for the benefit of the Beneficiaries, (ii) review, reconcile, and where appropriate, object to, any Disputed Claims, (iii) prosecute and settle the Causes of Action, (iv) make any distributions, as provided for under the Trust Agreement (the “Agreement”) and the Plan, and (v) liquidate the Trust Assets. All costs, expenses, and obligations incurred by the Trust in administering the Plan and performing the Agreement are to be paid from the Trust Assets.

The Trust is intended to qualify as a liquidating trust pursuant to United States Treasury Regulation section 301.7701-4(d). The primary purpose of the Trust is to resolve any outstanding claims, liquidate the Trust Assets, and liquidate the Trust with no objective to continue or engage in the conduct of a trade or business, and the Trust shall take no action inconsistent with such qualification except to the extent reasonably necessary to preserve or enhance the liquidation value of the Trust Assets, and consistent with the liquidating purpose of the Trust.

Pursuant to the terms of the Agreement, the Trust is managed by the Trustee and decisions by the Trustee are binding upon and conclusive to the Trust and its Beneficiaries. The Trustee performs its duty as set forth in the Agreement which became effective on the Effective Date of the Plan. The Trustee has been duly appointed as a representative of the Debtor’s estate pursuant to sections 1123(a)(5), (a)(7), and (b)(3)(B) of the Bankruptcy Code and the Plan. The Trustee is responsible for establishing cash reserves to fund the ongoing operations of the Trust and for paying costs and expenses incurred by the Trust. Such cash reserves were funded from the initial funding of \$5.0 million in cash and are expected to be further replenished by cash received by the Trust, including any proceeds from the Causes of Action, the liquidation of any other Trust Asset, and any cash in excess of the amount reserved for the Disputed Claims.

After establishing adequate cash reserves, the Trustee may make distributions to the Beneficiaries (“Distributions”) from time to time in accordance with the terms of the Agreement and the Plan.

The Trust will be dissolved no later than five years from the Effective Date; provided, however, that the Bankruptcy Court, upon motion by a party in interest, on notice with an opportunity for a hearing, may extend the term of the Trust for a finite period if (i) such extension is necessary to the purpose of the Trust, (ii) the Trustee receives an opinion of counsel or a ruling from the Internal Revenue Service (the “IRS”) stating that such extension would not adversely affect the status of the Trust as a liquidating trust for U.S. federal income tax purposes, and (iii) such extension is obtained within the six month period prior to the Trust’s fifth anniversary or the end of the immediately preceding extension period, as applicable.

Upon dissolution of the Trust, any remaining Trust Assets, with the exception of the Causes of Action, will be distributed to the Beneficiaries in accordance with the Plan and

Article 5 of the Agreement, provided that de minimis amounts (less than \$10,000) will be payable to charity.

After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed. Prior to the final distribution of all of the remaining Trust Assets, the Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Trustee's own compensation, costs and expenses in accordance with the Agreement until such time as the winding up of the Trust is completed.

Current Activities

The following is a summary of certain material developments regarding the Trust for the period May 1, 2019 through October 31, 2019:¹

A. Distributions

- On October 4, 2019, the Creditors' Trust announced a distribution of \$10,000,000 to holders of Interests payable commencing on or about October 28, 2019. The Trust established a Record Date for purposes of this distribution of October 4, 2019 in accordance with Section 5.2(b) of the Agreement. Of the \$10,000,000 declared distribution amount, \$232,910 was held in reserve for the benefit of the holders of Disputed Claims. The Creditors' Trust made this distribution on or about October 28, 2019.

B. Claims Reconciliations

- After a Disputed Claim becomes an Allowed Claim, the holder of such Allowed Claim receives all payments and distributions that they would have previously received had they been a holder of an Allowed Claim at the Effective Date.² From May 1, 2019 through October 31, 2019, the Trust resolved 8 Disputed Claims and issued Subsequently Allowed Claims Distributions totaling \$2,097,375. There were excess reserves related to the settled Disputed Claims totaling \$6,055,481.
- As of October 31, 2019 there are xx Disputed Claims that remain unresolved, and the Trust is holding reserves equal to \$3,530,792.

C. DFC Tax Assets

- The Creditors' Trustee continues to evaluate the tax-related assets and claims held by DFC, including with respect to the impact of the bankruptcy case commenced by the Commonwealth of Puerto Rico under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act on such assets and claims. The Trustee is serving on the Official

¹ Capitalized terms not defined herein shall have the meaning given to them in the Plan. A copy of the Plan can be found on the Bankruptcy Court's docket at docket entry number 632, or at <http://cases.gcginc.com/dor/key.php>.

² With respect to when a Disputed Claim becomes an Allowed Claim, the Trust has scheduled distributions to Subsequently Allowed Claims on or about the 15th of every month.

Committee of Unsecured Creditors in this Title III bankruptcy case and has filed a claim on behalf of DFC.

- In July 2017, the Trust received \$939,817 in tax refunds from the IRS. The Creditor's Trustee continues to review the circumstances surrounding these tax refunds and has engaged in discussions with the IRS regarding the same.

Pending Affirmative Causes of Action

Pursuant to the Plan, the Trust was vested with all claims and Causes of Action related to the Debtor. The following describes certain potentially material Causes of Action of the Trust that remain outstanding.

- Professional Integrated Services Corp. Litigation - the Trust is the successor to certain counterclaims filed by DFC in a litigation pending in the Puerto Rico Court of First Instance (Case No. KDP 2010-1693 (806)). The plaintiffs in that suit filed claims against DFC (among others) for damages for breach of contract and tort. The claims against DFC were subsequently dismissed. The only matters that remain pending in the litigation are counterclaims against Lesbia Blanco, a former employee of DFC, and the estate of her deceased husband, Luis R. Diaz Garcia, for violations of a contract with DFC. DFC has alleged damages of \$1.4 million. The counterclaim defendants filed a motion for summary judgment, which DFC opposed. DFC may also seek summary judgment in the near term. Trial may be scheduled depending on the outcome(s) of the motion(s) for summary judgment.
- Inversiones Cocomer, S.E. Litigation - the Trust is the successor to certain counterclaims filed by DFC in a litigation pending in the Puerto Rico Court of First Instance (Case No. KAC 2013-0560 (806)). The plaintiffs in that suit filed claims against DFC (among others) for damages for breach of contract and tort. The Creditors' Trust filed a motion of reference requesting the court to allow the voluntary dismissal of the case without prejudice in order to continue the causes of action in the United States Bankruptcy Court for the Southern District of New York. The Trust's motion was granted, and the Trust is drafting related pleadings it contemplates filing in the near term.

Financial Summary

The following activity has occurred at the Trust for the six months ended October 31, 2019:

	<u>Cash</u>
Balance at May 1, 2019	\$ 19,822,274
Additions ^(a)	595,872
Investment Income ^(b)	84,096
Distributions ^(c)	(11,864,465)
Operating Costs ^(d)	<u>(1,364,213)</u>
Balance at October 31, 2019	<u>\$7,273,564</u>

(a) Additions consist of I/O strip proceeds.

(b) Investment income consists of interest received on account of (i) DOF accounts of \$43,957, and (ii) operating account of \$40,139.

(c) Distributions consist of (i) a Creditors' Trust distribution of \$9,767,090 on October 28, 2019 (ii) a Subsequently Allowed Claims distribution of \$5,230 on May 15, 2019, and (iii) a Subsequently Allowed Claims distribution of \$2,092,145 on September 16, 2019

(d) Operating costs consist of payments made on account of (i) administrative expenses of \$567,895, and (ii) legal expenses of \$796,318.

Dated: November 19, 2019

Doral Financial Creditors' Trust
By: Drivetrain, LLC

By: 
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